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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,920	01/07/2004	Paul Brent Rivers	BE1-0052US	5778
49584	7590	06/06/2006	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/752,920

Applicant(s)

RIVERS, PAUL BRENT

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/7/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kassardjian (708). The patent to Kassardjian discloses the recited cap for a rod which is used for rebar purposes and therefor is a ground rod, however, such would merely be intended use as well where the cap in Kassardjian is capable of use on any type of ground rod, comprising a crown portion 16, a support portion formed of ribs near reference number 1 in figure 7, the crown portion is configured to have a portion near 3 in the form of a cavity (as set forth in figure 5) which can receive the rod including inner ribs 7, the crown portion has an outer surface, a bottom surface near 3 which has the cavity formed therein, the crown portion is curved and defines a dome as seen in figure 7, the cap has a first axis coincident with a second axis of the cavity, the cavity is positioned away from the crown portion a distance greater than or equal to the diameter of the cavity, another embodiment shown in figure 1 shows that it was contemplated to also provide the crown portion with a void that encircles the cavity formed by wall near 2 of a uniform thickness, the wall forms a cylinder and is hollow, the crown portion and support portion are fabricated from a rubber like material of which applicant acknowledges plastics as falling under a rubber like material definition as

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supported by claim 17, the crown portion and support are integral, the ground cap has a closed end and an open end where the cap defines a void such as in figure 1 which encircles a cavity 5 configured to receive a ground rod where the embodiment of figure 1 meets the independent claims 19 and 20 structurally and the cap is formed to redirect energy to protect anyone hitting the rod end.

Claims 1-9, 11-15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Daniels. The patent to Daniels discloses the recited cap for a ground rod comprising a crown portion 13, a support portion formed near the bottom of portion 13 in figure 5, the crown portion is configured to have a portion near 16 in the form of a cavity (as set forth in figure 5) which can receive the rod, the crown portion has an outer surface, a bottom surface near 15 which has the cavity formed therein, the crown portion is curved and defines a dome as seen in figure 5 where it is noted the shape of the dome is not clearly set forth in the claim where domes can have many different faceted shapes as well as being rounded where the change in angle creates an angular curve, the cap has a first axis coincident with a second axis of the cavity, the cavity is positioned away from the crown portion a distance greater than or equal to the diameter of the cavity, a void 14 encircles the cavity formed by wall that extends from area 15 to area 20 of a uniform thickness, the wall forms a cylinder and is hollow, the support portion is curved being that it is cylindrical in shape having curved inner and outer surfaces that continuously curve, the crown portion and support are integral, the ground cap has a closed end and an open end where the cap defines a void which encircles the

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cavity configured to receive a ground rod where the embodiment of figure 5 meets the independent claims 19 and 20 structurally and the cap is formed to redirect energy.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kassardjian (708) in view of Brown. The patent to Kassardjian discloses all of the recited structure but fails to disclose that the embodiments of figures 1 and 7 are interchangeable or useable together thereby teaching a curved wall that forms the support portion which forms a cylindrical cavity of specific dimensions. The patent to Brown discloses that it's old and well known in the art of caps for cylindrical objects, which would include rods as well, the curved crown portion can be formed hollow thereby creating a support portion near 126 which encircles the cavity within portion 122 to receive the bar or pipe therein where as seen in figure 9 the cavity can be longer than the void. It would have been obvious to one skilled in the art to modify the cap in Kassardjian by forming the crown in a hollow manner thereby forming the support portion as a cylindrical portion having curved walls, and forming the cavity of a length longer than the void created by the curved walls as suggested by Brown, where such teaches that the two types of embodiments set forth in Kassardjian are useable together

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and such would still provide a cap made of less material thereby saving money in material costs.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kassardjian (708). The patent to Kassardjian discloses the recited cap made of a plastic material but fails to disclose the use of PVC, however, such is considered to be merely a choice of mechanical expedients to form the cap of any plastic material of which PVC is a known material used to form caps as such would only require routine skill in the art to use routine experimentation to arrive at optimum materials. It would have been obvious to modify the cap in Kassardjian to be formed of any suitable plastic material including PVC as such is merely a choice of mechanical expedients to choose a specific plastic suitable for use in specific environments as such only requires routine skill in the art.

Conclusion

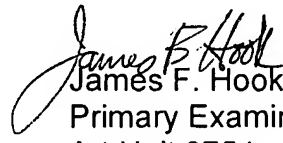
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to McDonald, Rivers, Wagner, Carlson, Kassardjian (636), Hecock (093 and 049), and Hernandez disclosing state of the art caps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


James F. Hook
Primary Examiner
Art Unit 3754

JFH